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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 1587	
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	First Named Inventor Steve Dispensa		
	Art Unit 2143	Examiner Asghar H. Bilgrami	
	Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.		
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>45,549</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____			
		Signature <u>Kyle J. Way</u> Typed or printed name <u>(720) 562-2283</u> Telephone number <u>7/21/06</u> Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			

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Practitioner's Docket No. 1587

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Steve Dispensa
Application No.: 09/981,422
Filed: 10-17-2001
For: PERFORMANCE MANAGEMENT SYSTEM

Confirmation No.: 6255
Group No.: 2143
Examiner: Asghar H. Bilgrami

Mailstop: AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Introductory Comments

In response to the final Office action dated June 1, 2006 (hereinafter "the final Office action"), the Assignee requests review of the final rejection in the above-identified application. No amendments are being filed with this request. A Notice of Appeal under 37 C.F.R. § 41.31(a)(1) is being filed herewith. The review is requested for the reasons provided in the following remarks.

Remarks

Claims 1-11, 13-41, 43-70 and 72-175 remain pending and stand rejected. (The Continuation Sheet (PTOL-326) of the final Office action states a smaller set of pending claims, but the Detailed Action of the final Office action indicates the set of claims identified herein.) The Assignee respectfully requests review of the rejections and requests allowance of claims 1-11, 13-41, 43-70 and 72-175 for the following reasons.

Neither Groath nor Dev Teach or Suggest Storing a Graphical Format of Performance Information in a Repository or Database

Claims 1-11, 13-16, 18, 19, 27-41, 43-46, 48, 49, 57-70, 72-75, 77, 78, 86-104, 106, 107, 115-133, 135, 136, 144-161, 163, 164 and 172-175 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,571,285 to Groath et al. (hereinafter “Groath”) in view of U.S. Patent No. 5,751,933 to Dev et al. (hereinafter “Dev”). (Page 2 of the final Office action.) This list includes all of the independent claims (i.e., claims 1, 31, 61, 90, 119 and 148).

Independent claim 1 sets forth a method for providing performance information of a communication network that includes, in part, “generating a graphical format of the performance information; and *storing the graphical format of the performance information in a repository....*” (Emphasis supplied.) Claims 31, 90 and 119 incorporate similar provisions. Further, claims 61 and 148 provide a performance management system having “a database system configured to store the performance information and *the graphical format of the performance information.*” (Emphasis supplied.) In some examples, storing the graphical format of the performance information allows faster presentation of the same graphical format to multiple users, as the graphical format need not be generated from the same performance information more than once.

The Assignee asserts that neither Groath nor Dev teach or suggest these particular provisions, as discussed below. (Please see also the most recent response of March 14, 2006 (hereinafter, “the response”), pages 22-24.)

Groath

The final Office action alleges that Groath discloses “a database system configured to store the performance information (col. 10, lines 15-24) and the graphical format of the performance information (col. 11, lines 43-62){Groath disclosed that the collected performance

data is stored in the database and is then conveyed graphically to disclose the availability of the network, hence the performance data has to be stored in some form of graphical format in the database (col. 10 on lines 21-24).” (Page 3 of the final Office action. See also page 12 of the final Office action.) The Assignee disagrees with the allegation.

As discussed in the response, Groath discloses “an architecture which is capable of monitoring a network for events and checking system functions and resources.” (Column 10, lines 2-6.) Also, “[r]eports on system performance, errors, etc. can be generated and output.” (Column 10, lines 9-10.) In addition, the *network status data* generated “is then stored in a database. *Thereafter, network availability is conveyed graphically.*” (Summary, column 2, lines 21-23; emphasis supplied.) More specifically, Fig. 16 indicates that *data* matching requested parameters for a report *are retrieved from a database* and then used to generate a graph. “A *database* is polled in operation 1602 for *data that matches the report parameters*. A graph is generated in operation 1604 from the data that matches the report parameters. In operation 1606, the generated graph is displayed to graphically represent the monitored elements, services, and processes of the network.” (Column 65, lines 29-34.) Thus, Groath does not teach or suggest *storing a graphical format of performance information*, as provided for in claims 1, 31, 61, 90, 119 and 148.

The final Office action points to column 10, lines 15-24, and column 11, lines 43-62, of Groath for support. However, the portion cited in column 10 specifically states that “[t]he data collected on the status of the network is manipulated and stored in a database. See operations 206 and 208. In operation 210, availability of the network is conveyed graphically.” (Column 10, lines 21-24.) In column 11, Groath indicates that “log files containing performance statistics gathered by a monitoring program can be transferred to a central server for processing by the Performance Data Manipulator [PDM]....” (Column 11, lines 47-50.) Thereafter, “[t]he PDM converts the log files from formats specific to a particular monitoring program into a common format. PDM then formats the file based on *data warehousing techniques* which include converting nodes and performance metrics to *key codes* which are stored in the database. The coded data file is *then bulk loaded into the database.*” (Column 11, lines 56-61; emphasis supplied.) At no point does Groath mention storing a graphical format of performance information to a database, as provided by claims 1, 31, 61, 90, 119 and 148 of the present application. In fact, Groath makes specific mention of storage of key codes by way of data

warehousing techniques, which necessarily employ a numeric format, and not a graphical format.

With respect to the assertion in the final Office action that “Groath disclosed that the collected performance data is stored in the database and is then conveyed graphically to disclose the availability of the network, *hence the performance data has to be stored in some form of graphical format in the database....*,” (Pages 3 of the Office action; emphasis supplied), the Assignee contends that such an assertion is a clear error of fact. If data is converted into a graphical format, such a conversion may be performed before storage (as in claims 1, 31, 61, 90, 119 and 148 of the present application), or after storage (as in Groath). As mentioned above, in some embodiments of the present application, storing of the graphical information provides the advantage of using that same graphical information in future reports without having to perform the graphical conversion again. (See page 45, line 25, to page 46, line 10, of the present application.) Otherwise, the graphical information must be generated from performance information every time such graphical information is requested, as is done in Groath.

Dev

Similarly, Dev provides a network management system which “can poll or communicate with certain network entities and can infer the status of network connectors and other network entities for which polling is impossible or impractical.” (Abstract.) A user interface of the system provides information concerning the network to a user. (Column 12, lines 27 and 28.) For example, views showing performance information pertaining to a selected network device may be provided by way of the user interface. (Column 14, lines 54-67.) The system further includes “a database manager 16 which manages the storage and retrieval of disk-based data. Such data include configuration data, an event log, statistics, history and current state information.” (Column 3, lines 60-63.) However, Dev does not teach or suggest storing a *graphical format* of performance information, as provided for in the claims.

At Least One Reference Must Teach or Suggest the Limitation in Question

The final Office action also states “[i]n response to applicant’s arguments against the references individually one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.” (Page 11 of the final Office action.) However, at least one of the references cited in the final Office action (i.e., Groath or

Dev) must teach or suggest the limitation in question (i.e., storing a graphical format of performance data in a repository or database). As shown above, neither Groath nor Dev do so.

Thus, given the foregoing, the Assignee asserts that claims 1, 31, 61, 90, 119 and 148 are allowable in view of the combination of Groath and Dev, and such indication is respectfully requested.

Further, each of the remaining pending claims depends from one of the independent claims, thus incorporating the provisions discussed above. Accordingly, the Assignee asserts that each of the dependent claims are allowable for at least the reasons provided above in support of independent claims 1, 31, 61, 90, 119 and 148, and such indication is respectfully requested.

Conclusion

Based on the above remarks, the Assignee respectfully requests the reversal of the final rejection of claims 1-11, 13-41, 43-70 and 72-175.

The Assignee hereby authorizes the Office to charge Deposit Account No. 21-0765 the appropriate fee under 37 C.F.R. § 41.20(b)(1) for the Notice of Appeal filed herewith. The Assignee believes no additional fees are due with respect to this filing. However, should the Office determine additional fees are necessary, the Office is hereby authorized to charge Deposit Account No. 21-0765.

Respectfully submitted,

Date: 7/21/06


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